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THE LAW SCHOOL. — More than the usual number of changes are to be announced. The requirements for the first year are to be increased by the addition of a course on Agency conducted by Professor Wambaugh. This change, although under contemplation for some time, is of an experimental nature, to be continued only if it proves successful. Professor Beale is to give second year Equity, and will be assisted in Criminal Law by Mr. S. H. E. Freund, LL. B. 1903, and Mr. A. A. Ballantine, LL. B. 1907. Professor Brannan will resume his courses on Bills and Notes and Partnership. Assistant Professor Warren will conduct Property I, and Quasi-Contracts will be conducted by Mr. L. F. Schaub, LL. B. 1906. Two new courses are announced for the second half year. Dean Ames will give a new course on Persons as well as the regular course on the same subject, and Professor Beale is to give a course on Municipal Corporations. Admiralty will again, as two years ago, be given by Mr. C. F. Dutch, LL. B. 1905, who will also conduct Equity III, and similarly the extra course on Massachusetts Practice will be conducted by Mr. Jeremiah Smith, Jr., LL. B. 1895, son of Professor Smith.

Owing to unexpected delays, Langdell Hall is not yet ready for general occupancy, and is in use only for lectures.

THE COMPARATIVE POWERS OF THE LEGISLATIVE AND JUDICIAL BRANCHES OF THE FEDERAL GOVERNMENT. — In a suit by the State of Kansas to restrain Colorado from using water from the Arkansas River for irrigation purposes the United States sought to intervene, claiming power in Congress to legislate on this question as incidental to the reclamation of large tracts of public land in the vicinity. *Kansas* v. *Colorado*, 206 U. S. 46. Article IV, § 3 of the Constitution gives Congress "power to dispose of and make all needful regulations respecting the territory or other property belonging to the United States." The courts have not yet reached the adjustment between the federal authority acquired thereby and that of a state, when the United States owns unceded land in such state. Broadly, the states must not

interfere with the right of Congress to control,[1] but it is also said the states' sovereignty is not restricted.[2] The Supreme Court here held that, as the power claimed for Congress would involve legislative control over the states, it was not granted under this constitutional provision. But the United States advanced another ground, upon which it based its claim of federal right to legislate, — the doctrine of "sovereign and inherent power." This was, in effect, that as the states can legislate solely concerning their internal affairs, and as all legislative power must be vested in the states or the federal government, the power to legislate concerning matters national in their scope — of which the present case was one — must therefore of necessity be in the federal government. The court answered this by drawing attention to the Tenth Amendment and by explaining its provisions. As pointed out in a previous decision,[3] also by Mr. Justice Brewer, this provision has hitherto been given too little consideration and effect. The court in vigorous language here declared that by the Tenth Amendment there are reserved to each state all powers over its internal affairs not prohibited to it or granted to the federal government by the Constitution, and that all powers over affairs national in scope not granted to the federal government are reserved to the people. To this timely exposition no exception can be taken.[4]

As Kansas owned lands on the Arkansas River, the state was unquestionably the plaintiff in interest.[5] And this was certainly a justiciable controversy between states.[6] Consequently this case seems similar to a number of others in which the Supreme Court has taken jurisdiction. But it is noteworthy that the court here built up an altogether new ground upon which to base its assumption of jurisdiction. This may be summarized thus: the United States is a nation, and as such its judicial power extends to all justiciable controversies in which it can reach by process the persons or property involved; by the Constitution, Article III, § 1, this entire judicial power was vested in the Supreme and other federal courts, and § 2 is neither a limitation nor an enumeration, but merely a declaration, leaving unrestricted the grant of the entire judicial power, unless there be limitations expressed elsewhere in the Constitution. Before this, the court had relied on the clause in § 2 which in terms extends its jurisdiction to controversies between two or more states.[7] Also, Jay,[8] Marshall,[9] Story,[10] and other notable justices[11] of that court have said with more or less emphasis that

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[1] Wisconsin R. R. *v.* Price County, 133 U. S. 496; Van Brocklin *v.* Tennessee, 117 U. S. 151.

[2] United States *v.* Railroad Bridge Co., 27 Fed. Cas. 686, 692. See State *v.* Bachelder, 5 Minn. 223; Woodruff *v.* North Bloomfield Co., 18 Fed. 753.

[3] Turner *v.* Williams, 194 U. S. 279, 295.

[4] To the same effect, see Mr. Justice Story in Martin *v.* Hunter's Lessee, 1 Wheat. (U. S.) 304, 324, and in his "Constitutional Law," 5 ed., § 1907.

[5] The plaintiff state must be the party in interest. New Hampshire *v.* Louisiana, 108 U. S. 76; Louisiana *v.* Texas, 176 U. S. 1. But Kansas might have been the party in interest without owning the land. Missouri *v.* Illinois, 180 U. S. 208; Kansas *v.* Colorado, 185 U. S. 125.

[6] Missouri *v.* Illinois, *supra;* Hans *v.* Louisiana, 134 U. S. 1, 15.

[7] Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657; South Dakota *v.* North Carolina, 192 U. S. 286.

[8] Chisholm *v.* Georgia, 2 Dall. (U. S.) 419, 475.

[9] Cohens *v.* Virginia, 6 Wheat. (U. S.) 264, 378, 383.

[10] Martin *v.* Hunter's Lessee, *supra*, 328, 333.

[11] Rhode Island *v.* Massachusetts, *supra*, 728; Robertson *v.* Baldwin, 165 U. S. 275, 279.

§ 2 is an enumeration or definition of the judicial power granted in § 1. In the same decision in which the court pointed out so clearly the limitations on Congress, it seems to have stated its own jurisdiction in terms wider than ever before. It will be interesting to observe whether the court will carry out consistently the doctrine here expressed, and if it does, what the effect will be on its jurisdiction.

STATE COMPELLING A CARRIER TO FURNISH A PARTICULAR FACILITY. — The theory of state control of intra-state commerce has long been established.[1] It is also settled that the exercise of this power is subject to the restrictions of the Fourteenth Amendment.[2] The primary duty of a common-carrier is to furnish adequate facilities for the public service which it has undertaken.[3] Whether or not it falls within this duty to furnish some particular facility must depend on many considerations, chief among which are the cost to the carrier and the necessity of the public.[4] The necessary effect of the enforcement of the duty to furnish an additional facility is to increase the cost of service rendered. If this new facility should produce directly a return sufficient to cover its cost and allow to the carrier a reasonable profit, no constitutional difficulty is encountered. But it is highly probable that a compelled facility will not be self-supporting. Such a case arose recently when a state ordered a carrier to operate a passenger train in order to make an important connection with a train on another route. Although the mere cost of operation exceeded considerably the probable returns from passengers carried on this train, the Supreme Court of the United States held that the enforcement of the order did not constitute a taking of property without due process of law, on the ground that the carrier would still be able to realize a reasonable profit on its entire intra-state business. *Atlantic Coast Line R. R. Co.* v. *North Carolina Corporation Commission*, 206 U. S. 1. The contention that compulsion to furnish a non-remunerative facility constitutes a taking of property without due process of law must rest on the theory that the carrier is entitled to adequate compensation for each item of service rendered. If this be true, all hope of efficient regulation of public service companies is at an end. The utter impossibility is apparent of devising a scheme of rates high enough to permit a profit on the carriage of each item of commerce over all possible divisions of the road, which will at the same time afford needed protection to shippers.[5]

In determining whether or not an order which results in increasing the cost of service is confiscatory, the cost of the performance of that service may properly be set off against the total returns from its fulfilment. It is a necessary result of this rule that losses which the carrier may incur on certain individual shipments will be distributed among other users of the service. If in the application of the rule only the total cost and earnings of the carrier should be considered, this burden might become very oppressive, since it would permit the state to compel the rendering of one or more distinct classes of service at a loss which in the end would be borne by users

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[1] Gibbons *v.* Ogden, 9 Wheat. (U. S.) 1, 194; Smyth *v.* Ames, 169 U. S. 466, 526.
[2] See Smyth *v.* Ames, *supra.*
[3] *Cf.* People *v.* St. Louis, etc., R. R. Co., 176 Ill. 512, 524.
[4] See Wisconsin, etc., Railroad *v.* Jacobson, 179 U. S. 287, 300.
[5] *Cf.* St. Louis, etc., Ry. Co. *v.* Gill, 156 U. S. 649, 665.